

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

K.S., et al.,

Plaintiffs,

-v-

City of New York, et al.,

Defendants.

CIVIL ACTION NOS. 21 Civ. 4649 (JSR) (SLC)
24 Civ. 3390 (JSR) (SLC)

ORDER

SARAH L. CAVE, United States Magistrate Judge.

On October 29 and 30, 2024, the Court held conferences (the “Conferences”) in these consolidated actions to resolve ongoing discovery disputes (the “Disputes”) recently referred to the undersigned by the Honorable Jed S. Rakoff. (Case No. 21 Civ. 4649, ECF No. 154; Case No. 24 Civ. 3390, ECF No. 37). The Court has not yet addressed all of the Disputes before it and, for that reason, will reconvene with the parties again on Friday, November 1, 2024 at 2:00 p.m. on the Court’s conference line (“Friday’s Conference”). The Court has, however, heard argument regarding Plaintiffs’ requests that several defendants—namely, (1) the City of New York (the “City”); (2) the New York City Department of Education (the “DoE,” with the City, the “City Defendants”); (3) St. Vincent’s Services, Inc. (“SVSI”); Heartshare Human Services of New York (“Heartshare”); and Heartshare St. Vincent’s Services (“HSVS,” with SVSI and Heartshare, the “Foster Care Defendants”)—produce certain documents or make available representatives for depositions (the “Requests”).

Pursuant to the discussion at the Conferences, the Court orders the following:

1. As to Plaintiffs’ Requests to the City Defendants:

- a. Counsel for the City Defendants shall search for the following categories of documents and confirm by Friday, November 8, 2024 whether any additional documents have been located and will be produced:
- i. Attachments to HSVS and SVSI contracts with the Administration for Children's Services ("ACS").
 - ii. Policies and procedures related to ACS monitoring of the Foster Care Defendants from 2009 through 2014.
 - iii. Abuse and neglect reporting data for children in foster care between 2009 and 2017.
 - iv. Policies and procedures related to criminal background checks of foster parents implemented pursuant to a change of federal law and resulting issuance of directives by the New York State Office of Children and Family Services ("OCFS") in 2008.
 - v. Policies and procedures regarding screening of previously approved foster homes before placement of new or additional children.
 - vi. Unsealed transcripts of depositions taken of officials employed by the Foster Care Defendants, ACS, or OCFS in Elisa W. v. City of New York, No. 15 civ. 5273 (S.D.N.Y.) (the "Elisa W. Litigation").
 - vii. Any inter-agency agreement between ACS and DoE.
 - viii. Policies and procedures regarding which responsibilities ACS delegated to the Foster Care Defendants.
 - ix. ACS organizational charts.

- x. Documents related to investigations of ACS carried out by the New York State Comptroller, the New York City Department of Investigation, or OCFS.
 - xi. Documents related to: (i) D.S.'s Individualized Education Programs for the years of 2010 to 2012; (ii) D.S.'s 407 Report; and (iii) services DoE offered to children who had experienced trauma and had IEPs or were in foster care.
- b. By 5:00 p.m. on Thursday, October 31, 2024, Plaintiffs' counsel shall email to the City Defendants' counsel a list, from the City Defendants' prior document productions, of documents she has been able to identify in the following categories: (i) the training of case managers, case workers, and supervisors in the foster care system; and (ii) DoE policies and data collection. Counsel for the City Defendants shall review this list and identify the Bates numbers of any additional responsive documents they have produced in these categories. The Court will address and set the City Defendants' deadline to respond to these requests at Friday's Conference.
- c. Regarding production of emails, counsel for Plaintiffs shall provide to counsel for the City Defendants by 5:00 p.m. on Thursday, October 31, 2024 a list of ACS custodians. Counsel for the City Defendants shall search the accounts of the listed custodians using (i) previously provided search terms and (ii) D.S.'s name. The Court will address and set the City Defendants' deadline to respond to this request at Friday's Conference.

- d. Counsel for the City Defendants shall email to chambers by 5:00 p.m. on Thursday, October 31, 2024, an index of the production of documents in the Elisa W. Litigation. The Court will review the index in camera and direct the City Defendants which, if any, additional documents must be produced.
 - e. Counsel for the City Defendants shall provide written confirmation that the Department of Health and Mental Hygiene retains “early intervention records” for only seven (7) years and has been unable to locate any such records related to D.S. The Court will address and set the City Defendants’ deadline to provide this confirmation at Friday’s Conference.
2. As to Plaintiffs’ Requests to the Foster Care Defendants:
- a. The Foster Care Defendants’ deadline to respond to Plaintiffs’ third set of requests for production is Monday, November 4, 2024 .
 - b. Counsel for the Foster Care Defendants shall consult with his clients regarding the search for and production of the following documents:
 - i. HSVS training materials and organizational charts for 2009 to 2014.
 - ii. SVSI internal monitoring and corrective action documents for 2009 to 2014.
 - iii. The date on which HSVS and SVSI became affiliated.
 - iv. Records related to R.C., including any records showing a history of abusive or violent behavior exhibited by R.C.
 - c. The Foster Care Defendants’ counsel has represented that the following documents do not exist or have not been located:

- i. Documents related to audits of the Foster Care Defendants by, or contracts with, ACS.
 - ii. Counseling records for D.S. for years other than 2016 and 2017.
 - iii. Educational services records for D.S. for the period from May 2012 to September 2013.
- d. Plaintiffs' deposition of Ms. Gonzalez—the Foster Care Defendants' Rule 30(b)(6) witness—shall continue.
- e. Plaintiffs may take a deposition of Foster Care Defendants' witness Rosalyn Chernofsky.

Finally, as noted above, a follow-up discovery conference is scheduled for **Friday, November 1, 2024 at 2:00 p.m.** on the Court's conference line. The parties are directed to call: (866) 380-1828; access code: 380-9799, at the scheduled time.

Dated: New York, New York
October 30, 2024

SO ORDERED.


SARAH L. CAVE
United States Magistrate Judge